

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**Antonio Fernandez,**

Plaintiff,

v.

**Wind Chime Properties, L.P.,** a  
California Limited Partnership;  
**White Spring Associates, Inc.,**  
a California Corporation;  
**Jimenez Brothers Enterprises,**  
**Inc.,** a California Corporation;  
and Does 1-10,

Defendants.

**Case No. 2:18-cv-10625-DMG-KS**

**Plaintiff's Case Statement**

Pursuant to this Court's "ADA Disability Access Litigation: Order Granting Application for Stay and Early Mediation," filed February 12, 2019, the plaintiff submits his Plaintiff's Case Statement.

**A. Itemized List**

The specific conditions at the site that forms the basis of this lawsuit are the lack of accessible ticket dispenser, point-of-sale machine, check-writing surface, route of travel and restroom facilities at the Jimenez Ranch Market ("Market") located in Pomona, California.

1 1. Inaccessible Ticket Dispenser:



- 17
- 18 ❖ Where a clear floor or ground space allows a parallel approach to an
  - 19 element and the high side reach is over an obstruction, the height of
  - 20 the obstruction shall be 34 inches maximum and the depth of the
  - 21 obstruction shall be 24 inches maximum. The high side reach shall
  - 22 be 48 inches maximum for a reach depth of 10 inches maximum.
  - 23 Where the reach depth exceeds 10 inches, the high side reach shall
  - 24 be 46 inches maximum for a reach of 24 inches maximum. 2010
  - 25 Standards § 308.3.2.
  - 26 ❖ Here, the meat department ticket dispenser was in excess of the
  - 27 heights allowed by law.
  - 28 ❖ The included photo of the Facility depicts the above violation.

2. Inaccessible Point of Sale Machine:



- ❖ Under the ADA, when a place of public accommodation offers a facility, privilege, or advantage to its customers, it must offer full and equal enjoyment of the same to persons with disabilities. 42 USC 12182(a).
- ❖ Here, the electronic point of sale machine made available to customers is a distinct facility, privilege or advantage and, therefore, must be accessible to persons with disabilities also.
- ❖ While there is no explicit access standard for “point of sale machines,” the most analogous standard for display screens on such devices is found at section 707.7.1 of the 2010 Standards. Under that standard, the display screen must be visible from a viewpoint 40

1 inches above the floor. The California Building Code (CBC) is more  
2 explicit, directly addressing point of sale machines.

- 3 ❖ Since the 1995 version of the CBC—and continuing to this date—  
4 point of sales machines were required to be accessible to persons  
5 with disabilities. Under the CBC, where point of sale machines are  
6 provided at the accessible check stands, sales or service counters, the  
7 display screen must be visible from a viewpoint 40 inches above the  
8 floor. If the display screen is mounted vertically (or tipped away from  
9 the viewer less than 30 degrees) the center line of the display screen  
10 shall not be more than 52 inches above the floor. 11B- 707.7.1.1. If  
11 the display screen is angled or tipped away from the viewer by more  
12 than 30 degrees but less than 60 degrees, then the center line of the  
13 display screen shall not be more than 44 inches above the floor. 11B-  
14 707.7.1.2. Finally, if the display screen is mounted horizontally (or  
15 tipped away from the viewer by more 60 degrees) then then the  
16 center line of the display screen shall not be more than 34 inches  
17 above the floor. This has been the accessibility standard in all  
18 versions of the CBC since 1995.
- 19 ❖ In the 1995 CBC, that standard as found at section 3105A(g)5. In  
20 the 1998 through 2013 versions of the CBC, that standard was  
21 found at section 1117B.7.5. Currently, that standard is found at  
22 section 11B-707.7.1.
- 23 ❖ By failing to provide an accessible point of sale machine, the  
24 defendants have violated the law.
- 25 ❖ The included photo of the Facility depicts the above violation.
- 26  
27  
28



### 3. Lack of Accessible Check-Writing Surface:



- ❖ Under the ADA, when a place of public accommodation offers a facility, privilege, or advantage to its customers, it must offer full and equal enjoyment of the same to persons with disabilities. 42 USC 12182(a).
- ❖ Here, the check writing surface at the Market made available to customers is a distinct facility, privilege or advantage and, therefore, must be accessible to persons with disabilities also. Under the ADA Standards, check writing surfaces—which constitute “work surfaces”—whether located at check-out aisles or at sales counters must be located between 28 inches and 34 inches above the floor. See 2010 Standards 902.3, 904.3.3.
- ❖ Here, by failing to provide an accessible check-writing surface, the defendants have violated the law.
- ❖ The included photo of the Facility depicts the above violation.

4. Inaccessible Mirror:



- ❖ Mirrors shall be mounted with the bottom edge of the reflecting surface no higher than 40 inches above the finish floor. 2010 Standards § 603.3.
- ❖ Here, the mirror is mounted higher than the maximum permitted and is a violation of the ADA.
- ❖ The included photo of the Facility depicts the above violation.

5. Lack of Accessible Grab Bar:



- ❖ Grab bars at the toilet must be mounted between 33 and 36 inches in height. 2010 Standards § 609.4.
- ❖ Here, the failure to ensure that the grab bars were mounted within the range required by the ADA is a violation of the law.
- ❖ The included photo of the Facility depicts the above violation.

6. Inaccessible Sink:



- ❖ Hot water and drain pipes under lavatories must be insulated or otherwise configured to protect against contact. 2010 Standards §606.5.
- ❖ Here, the failure to wrap the plumbing underneath the sink is a violation of the ADA.
- ❖ The included photo of the Facility depicts the above violation.





1        *Note:* As stated in the Complaint, given the obvious and blatant  
 2 violations, the plaintiff has alleged, on information and belief, that there are  
 3 other violations and barriers on the site that relate to her disability. Plaintiff  
 4 intends to conduct a site inspection and amend the complaint, to provide  
 5 proper notice regarding the scope of this lawsuit, once she conducts a site  
 6 inspection. See *Doran v. 7-Eleven Inc.*, (9th Cir. 2008) 524 F.3d 1034 (holding  
 7 that once a plaintiff encounters one barrier at a site, he can sue to have all  
 8 barriers that relate to his disability removed regardless of whether he  
 9 personally encountered them). Thus, settlement must address this holistic  
 10 remediation.

## 11        **B.     Amount of Damages**

12        Under the Unruh Civil Rights Act and the California Disabled  
 13 Persons Act, a plaintiff is entitled to two types of damages: (1) actual damages  
 14 and (2) a penalty assessment. Cal. Civ. Code § 52(a); 54.3(a). “The statute  
 15 lists actual damages and statutory damages as two separate categories of  
 16 damages that a plaintiff may recover.” *Botosan v. Paul McNally Realty*, 216  
 17 F.3d 827, 835 (9th Cir. 2000). The penalty assessment can be “no less than  
 18 \$4,000” under the Unruh Civil Rights Act (Cal. Civ. § 52(a)) and no less than  
 19 \$1,000 under the California Disabled Persons Act (Cal. Civ. § 54.3(a)). Each  
 20 responsible party under the ADA is individually liable for the denial of rights.  
 21 *Lentini v. California Center for the Arts, Escondido*, 370 F.3d 837, 849-851  
 22 (9th Cir. 2004).

23        The Unruh Civil Rights Acts provides for minimum statutory penalties  
 24 of \$4,000 plus actual damages for each offense against each responsible entity.  
 25 Thus, Plaintiff claims \$4,000 in statutory penalties against the property  
 26 owners, Wind Chime Properties, L.P. and White Spring Associates, Inc. and  
 27  
 28

1 \$4,000 against the business, Jimenez Brothers Enterprises, Inc., for a sum total  
 2 of \$8,000. If this matter proceeds beyond mediation, Plaintiff will additionally  
 3 be seeking damages for on-going deterrence.

4  
 5 **C. Demand for Settlement of Case**

6 First, to provide for accessible ticket dispenser, point-of-sale machine,  
 7 check-writing surface, route of travel and restroom facilities at the Market.

8 Second, enter into a court enforceable consent decree binding the  
 9 defendants to: (1) institute policies and procedures whereby they maintain the  
 10 property in a compliant state; (2) the defendants agree to obtain and deliver a  
 11 CASp report on the property to the plaintiff (with photos) within 30 days that  
 12 identifies all access barriers. Thereafter, the plaintiff will have 30 days to  
 13 comment on the report. If the plaintiff notes other barriers, the plaintiff can  
 14 make a demand that the defendants correct them. If the parties cannot  
 15 reasonably agree on barrier correction within 10 days following plaintiff's  
 16 demand, the plaintiff has the right to file a new action or refile the action in  
 17 state or federal court.

18 Lastly, to settle this matter globally at mediation, that Defendants pay  
 19 \$8,000 in statutory penalties and submit to the court as to reasonable  
 20 attorney's fees and costs as provided by both the ADA and Unruh.

21  
 22  
 23 Dated: February 26, 2019

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24  
 25 By: /s/ Dennis Price  
 26 Dennis Price, Esq.  
 27 Attorney for Plaintiff  
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